

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOSE SALOMON PANDO**

Claimant

VS.

**PATRICK WELL SERVICE**

Respondent

AND

**PETROSURANCE CASUALTY COMPANY**

Insurance Carrier

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Docket No. 227,360

**ORDER**

Respondent requested Appeals Board review of Administrative Law Judge Pamela J. Fuller's February 2, 1999, Decision. On July 14, 1999, the Appeals Board heard oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by his attorney, Lawrence M. Gurney of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kurt W. Ratzlaff of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and has adopted the stipulations listed in the Decision.

**ISSUES**

On August 15, 1996, claimant was injured while working for the respondent as an oil rig operator. The Administrative Law Judge found claimant suffered a chronic right rotator cuff sprain and a chronic neck sprain as a result of the work-related accident.

Based on a 68 percent work task loss and a 67.5 wage loss, the Administrative Law Judge awarded claimant a 67.75 percent work disability.<sup>1</sup>

Respondent appealed and contends that claimant suffered only a right shoulder injury as a result of this August 15, 1996, accident. Accordingly, respondent argues claimant's permanent partial disability should be limited to a scheduled injury.<sup>2</sup>

Further, the respondent argues, even if it is found claimant sustained a body as a whole disability, claimant should be limited to an award based on his functional impairment rating because claimant did not make a good faith effort to find appropriate employment.<sup>3</sup>

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds the Administrative Law Judge's Decision should be affirmed. The Appeals Board does so for the reasons stated in the Administrative Law Judge's findings and conclusions and adopts them as its own.

The Appeals Board disagrees with respondent's argument that Philip R. Mills, M.D., withdrew his impairment of function rating for claimant's neck injury. At Dr. Mills' deposition, respondent's attorney told Dr. Mills that claimant testified at the regular hearing that he was not having any neck complaints. Respondent's attorney then asked Dr. Mills if that were true would Dr. Mills change his diagnosis or impairment ratings. Dr. Mills indicated he would and claimant would not have any impairment because of a neck sprain. But that was not claimant's testimony at the regular hearing. Claimant was asked, "Do you have any other pains or problems." Claimant answered, "No." Claimant was further asked if he discussed with Dr. Mills all the problems he was having, and claimant answered, "Yes." Furthermore, claimant was then asked, if he was any better now than he was when he saw Dr. Mills, and claimant answered, "No."

The Appeals Board finds that Dr. Mills did not withdraw his permanent functional impairment rating regarding claimant's neck injury. Based on respondent's attorney's hypothetical, Dr. Mills did indicate that if claimant no longer had neck symptoms he would not assess claimant with a functional impairment for a neck injury. But as pointed out

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<sup>1</sup>See K.S.A. 1996 Supp. 44-510e(a).

<sup>2</sup>See K.S.A. 1996 Supp. 44-510d(a)(13).

<sup>3</sup>See Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

above, claimant was not asked if he was having any neck complaints. Likewise, he did not testify that he was not having any neck complaints. He did specifically describe neck complaints to Dr. Mills.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's February 2, 1999, Decision, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Lawrence M. Gurney, Wichita, KS  
       Kurt W. Ratzlaff, Wichita, KS  
       Pamela J. Fuller, Administrative Law Judge  
       Philip S. Harness, Director